

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE KARAS

TRUSTEES OF THE PLUMBERS and STEAMFITTERS
LOCAL 21 PENSION FUND

Plaintiffs,

COMPLAINT

-against-

CV

SUSAN GHIO

Defendant.

U.S. DISTRICT COURT
S.D. OF N.Y. W.P.
FILED
2008 JAN 18 PM 4:55

08 CIV. 0514

Plaintiff, Trustees of the Plumbers and Steamfitters Local 21 Pension Fund by their attorneys Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC allege as follows:

JURISDICTION AND VENUE

1. This action is based on the provisions of Section 502(a)(3) and Section 515 of the Employee Retirement Income Security Act, as amended (hereinafter referred to as "ERISA") (29 U.S.C. Section 1132(a)(3)).
2. Jurisdiction is conferred upon this Court by Section 301 of the Taft-Hartley Act (29 U.S.C. Section 185) and Sections 502(e)(1) and 502(f) of ERISA (29 U.S.C. Sections 1132(e)(1) and 1132(f)); and derivative jurisdiction is contained in 28 U.S.C. Sections 1331.
3. Venue properly lies in this District under the provisions of 502(e)(2) of ERISA (29 U.S.C. Section 1132(e)(2)) and 28 U.S.C. Section 1331(b).
4. This action is brought by the respective Trustees of the Funds in their fiduciary capacities for monetary damages and other equitable relief under ERISA and for unjust enrichment for the wrongful retention of pension funds.

PARTIES

5. The Plaintiff Trustees are, at all relevant times, the fiduciaries of jointly administered multi-employer, labor management trust funds as defined by Section 3(21)(A) and Section 502(a)(3) of ERISA (29 U.S.C. Sections 1002(21)(A) and 1132(a)(3)). The Funds are established and maintained by the Union and various Employers pursuant to the terms of the Collective Bargaining Agreements and Trust Indentures in accordance with Section 302(c)(5)(1) of the Taft-Hartley Act (29 U.S.C. Section 186 (c)(5)). The Funds are employee benefit plans within the meaning of Sections 3(1), 3(2), 3(3) and 502(d)(1) of ERISA (29 U.S.C. Sections 1002 3(1), 3(2), 3(3) and 1132(d)(1)), and multi-employer plans within the meaning of Sections 3(37) and 515 of ERISA (29 U.S.C. Sections 1002(37) and 1145). Plaintiffs are Trustees of the Funds and the "plan sponsor" within the meaning of Section (3)(16)(B)(iii) of ERISA (29 U.S.C. Section 1002(16)(B)(iii)).

6. The Funds provide fringe benefits to eligible employees, retirees and their dependents on whose behalf the Employer is required to contribute to the Funds pursuant to its Collective Bargaining Agreement (hereinafter referred to as the "C.B.A.") between the Employer and the Union. The Funds are authorized to collect pension contributions on behalf of the employees of the Employers, and the Plaintiff Trustees as fiduciaries of the Funds are authorized to maintain suit as independent legal entities under Section 502(d)(1) of ERISA (29 U.S.C. Section 1132(d)(1)) and are obligated to bring actions to enforce the provisions of the C.B.A. and Trust Indentures that concern the protection of employee benefit rights.

7. The Plaintiff's principal office is located and administered at 1024 McKinley Street, Peekskill, NY 10566, County of Westchester.

8. Upon information and belief, the defendant, Susan Ghio is the mother of Michael Ghio, a deceased member of the Plaintiff Pension Fund, who resides in Port Jervis, NY.

CAUSES FOR RELIEF
AS AND FOR A FIRST CLAIM FOR RELIEF

9. Upon information and belief on or about December 1, 2006 and January 1, 2007, the Defendant mistakenly received through direct deposit, \$43,336.42 as a beneficiary of Michael Ghio.

10. Upon information and belief on or about March 1, 2007, the Plaintiff Fund Office discovered the Defendant had been overpaid in the amount of \$43,336.42.

11. On or about March 1, 2007, the Fund Office contacted the Defendant notifying her of the overpayment of \$43,336.42 and requested the return of the \$43,336.42.

12. On or about July 27, 2007, our offices contacted the Defendant with regard to the overpayment and the defendant was sent a demand letter by counsel herein by regular and certified mail on December 6, 2007 advising her of the overpayment of \$43,336.42 and requesting return of the overpayment to avoid litigation.

13. The Defendant paid \$3700.00 but has failed to pay the remaining balance of \$39,636.42.

14. The Plaintiff is a multi-employer plan and the lack of these funds and unnecessary costs incurred has injured the participants of the benefit plan.

15. Under the circumstances, it would be inequitable for the defendant to retain the pension benefits. The defendant would be unjustly enriched at the detriment of the fund if the benefits were not returned.

16. Accordingly, the Defendant is liable to the Plaintiff in the amount of \$39,636.42 plus interest.

AS AND FOR A SECOND CLAIM FOR RELIEF

17. Plaintiff repeat, reiterate and reallege each and every allegation contained in paragraphs "1" through "16" of this Complaint as if fully set forth at length herein.

18. Section 29 USCA 1132 (g)(1) provides the court in its discretion may allow reasonable attorneys fees and costs of an action.

19. The Defendant knowingly failed to return funds that were not intended for him.

20. The Plaintiff is a benefit fund and the costs incurred in recovering the benefits unjustly received should be recovered from the Defendant.

21. Accordingly, Defendant is liable to the Plaintiff for attorneys' fees and costs.

WHEREFORE, Plaintiff respectfully pray for Judgment against Defendant, SUSAN GHIO as follows:

- a. In the sum of \$39,636.42
- b. Attorney fees and costs pursuant to Section 29 USCA 1132 (g)(1))
- c. For such other and further relief as the court deems appropriate

Dated: Hempstead, New York
January 15, 2008

Respectfully submitted,

BARNES, IACCARINO, VIRGINIA,
AMBINDER & SHEPHERD, PLLC

By: 

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